

It is held in the Office Action that the Kasila et al. reference teaches the general conditions of the instant claims and thus it would be obvious to one of ordinary skill in the art to modify the teachings of Kasila et al. to arrive at Applicants' invention. Brown et al. is cited to teach the advantages of using the microplate surface scintillation effect; however, this would appear to add little, if anything, to Kasila et al. because Kasila et al. also teach use of microplates in their assay.

It is respectfully submitted that requiring the exact "opposite scenario" is not merely a modification of reaction conditions, but rather, is a fundamental change of the assay itself. There is absolutely nothing in either Kasila et al. or Brown et al. that teaches or suggests Applicants' claimed invention which requires the reaction product to be bound to the scintillation material.

The Examiner cites In re Aller, 105 USPQ 233 (C.C.P.A. 1955) to support the rejection. It is respectfully submitted that the facts of In re Aller are non-analogous to the present invention. The process sought to be patented in In re Aller differed from the prior art **only** in reciting a different temperature and concentration of a reactant. In marked contrast, Applicants' assay is fundamentally different from the prior art, it is not merely a change in reaction conditions over the prior art, such as a change in temperature or a change in concentration of reactants. Moreover, even the C.C.P.A. acknowledged that such changes (i.e., temperature and concentration) may under certain circumstances impart patentability to an invention (In re Aller at 235)

Even if one skilled in the art had both Kasila et al. and Brown et al. before him, he still would not arrive at Applicants' invention. The references fail not only to expressly disclose Applicants' claimed invention, but also fail to suggest to one of ordinary skill in the art modifications needed to meet all the claim limitations (see Litton Industrial Product, Inc. v. Solid State Systems, Corp., 225 USPQ 34, 38 (Fed. Cir. 1985).

There is not even the remotest hint in either cited reference to suggest the modifications necessary to arrive at Applicants' claimed assay. It is submitted that the only way a skilled artisan would be motivated to modify the cited references to arrive at Applicants' assay would be to use Applicants' own teachings as a guide. As is well settled, using Applicant's own disclosure as a ground to make an obviousness rejection is a classic example of using impermissible hindsight reconstruction (see In re Sponnable, 160 USPQ 237 (CCPA 1969).

It is respectfully submitted that Applicant's specification and claims are in proper form.
Applicants respectfully request that the rejection of the claims under 35 U.S.C. §103(a) be withdrawn and that pending Claims 1, 3, 5-10 and 19 be passed to allowance.

Respectfully submitted,

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Date: February 14, 2003


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